



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

April 15, 2022

Elizabeth A. Ising
Gibson, Dunn & Crutcher LLP

Re: The TJX Companies, Inc. (the "Company")
Incoming letter dated February 7, 2022

Dear Ms. Ising:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Trillium ESG Global Equity Fund and James T. Campen for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the Company issue a public report prior to December 31, 2022 detailing any known and any potential risks and costs to the Company caused by enacted or proposed state policies severely restricting reproductive rights, and detailing any strategies beyond litigation and legal compliance that the Company may deploy to minimize or mitigate these risks.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal transcends ordinary business matters.

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2021-2022-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Jonas Kron
Trillium Asset Management

February 7, 2022

VIA E-MAIL

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *The TJX Companies, Inc.*
Shareholder Proposal of Trillium ESG Global Equity Fund and James T. Campen
Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, The TJX Companies, Inc. (the “Company”), intends to omit from its proxy statement and form of proxy for its 2022 Annual Meeting of Shareholders (collectively, the “2022 Proxy Materials”) a shareholder proposal (the “Proposal”) and statements in support thereof (the “Supporting Statement”) received from the Trillium ESG Global Equity Fund and Zevin Asset Management on behalf of James T. Campen (the “Proponents”).

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2022 Proxy Materials with the Commission; and
- concurrently sent a copy of this correspondence to the Proponents.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that a shareholder proponent is required to send companies a copy of any correspondence that the proponent elects to submit to the Commission or the staff of the Division of Corporation Finance (the “Staff”). Accordingly, we are taking this opportunity to inform the Proponents that if the Proponents elect to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

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THE PROPOSAL

The Proposal states:

RESOLVED: Shareholders request that TJX issue a public report prior to December 31, 2022, omitting confidential and privileged information and at a reasonable expense, detailing any known and any potential risks and costs to the company caused by enacted or proposed state policies severely restricting reproductive rights, and detailing any strategies beyond litigation and legal compliance that the company may deploy to minimize or mitigate these risks.

In addition, the Supporting Statement “recommend[s] that the report evaluate any risks and costs to the company associated with [such] new laws and legislation severely restricting reproductive health care, and similar restrictive laws proposed or enacted in other states” and that the “board’s analysis may include any effects on employee hiring, retention, and productivity, and decisions regarding closure or expansion of operations in states proposing or enacting [such] laws and strategies such as any public policy advocacy by the company, related political contributions policies, and human resources or educational strategies.”

A copy of the Proposal and the Supporting Statement, as well as related correspondence with the Proponent, is attached to this letter as Exhibit A.

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur with our view that the Proposal may be excluded from the 2022 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal relates to matters relating to the Company’s ordinary business operations and does not focus on a significant social policy issue for purposes of Rule 14a-8.

ANALYSIS

The Proposal May Be Excluded Pursuant To Rule 14a-8(i)(7) Because It Deals With Matters Related To The Company’s Ordinary Business Operations

The Proposal requests a report on “any known and any potential risks and costs to the Company caused by enacted or proposed state policies severely restricting reproductive rights, and detailing any strategies . . . to minimize or mitigate these risks.” As discussed below, the Proposal relates to the Company’s ordinary business operations, including the Company’s assessment of the impact of government regulation, and the Company’s management of its workforce, and does not focus on a significant social policy issue that

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transcends the Company's ordinary business operations. Therefore, the Proposal is excludable under Rule 14a-8(i)(7).

A. *Background On Rule 14a-8(i)(7)*

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company's "ordinary business" operations. According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" refers to matters that are not necessarily "ordinary" in the common meaning of the word, but instead the term "is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release"). In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting," and identified two central considerations that underlie this policy. As relevant here, one of these considerations is that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." *Id.* Examples of such tasks cited by the Commission include "management of the workforce, such as the hiring, promotion, and termination of employees." *Id.*

Moreover, framing a shareholder proposal in the form of a request for a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the proposed report is within the ordinary business of the issuer. See Exchange Act Release No. 20091 (Aug. 16, 1983); see also *Johnson Controls, Inc.* (avail. Oct. 26, 1999) ("[Where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7).").

A proposal's request for a review of certain risks also does not preclude exclusion if the underlying subject matter of the proposal is ordinary business. In Staff Legal Bulletin No. 14E (Oct. 27, 2009) ("SLB 14E"), the Staff explained how it evaluates shareholder proposals relating to risk:

[R]ather than focusing on whether a proposal and supporting statement relate to the company engaging in an evaluation of risk, we will instead focus on the subject matter to which the risk pertains or that gives rise to the risk
[S]imilar to the way in which we analyze proposals asking for the preparation of a report, the formation of a committee or the inclusion of disclosure in a

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Commission-prescribed document—where we look to the underlying subject matter of the report, committee or disclosure to determine whether the proposal relates to ordinary business—we will consider whether the underlying subject matter of the risk evaluation involves a matter of ordinary business to the company.

Consistent with its positions in SLB 14E, the Staff has repeatedly concurred with the exclusion of shareholder proposals seeking risk assessments when the subject matter concerns ordinary business operations. *See, e.g., Amazon.com, Inc. (Oxfam America, Inc.)* (avail. Apr. 3, 2019) (concurring with the exclusion of a proposal urging the company’s board of directors to conduct human rights impact assessments for certain food products that the company sells that present a high risk of adverse human rights impacts); *McDonald’s Corp.* (avail. Mar. 22, 2019) (concurring with the exclusion of a proposal asking the company to “disclose the economic risks” it faced from “campaigns targeting the [c]ompany over concerns about cruelty to chickens” because it “focuse[d] primarily on matters relating to the [c]ompany’s ordinary business operations”); *Exxon Mobil Corp.* (avail. Mar. 6, 2012) (concurring with the exclusion of a proposal asking the board to prepare a report on “environmental, social, and economic challenges associated with the oil sands,” which involved ordinary business matters); *The TJX Companies, Inc.* (avail. Mar. 29, 2011) (concurring with the exclusion of a proposal requesting an annual assessment of the risks created by the actions the company takes to avoid or minimize U.S. federal, state and local taxes and provide a report to shareholders on the assessment).

Most recently, in *Walmart, Inc.* (avail. Apr. 7, 2021) (“*Walmart 2021*”), the Staff concurred with the exclusion of a shareholder proposal with a resolved clause that is virtually identical to the Proposal. The proposal requested that the company “detail[] any known and any potential risks and costs to the [c]ompany caused by enacted or proposed state policies affecting reproductive rights, and detailing any strategies beyond litigation and legal compliance that the [c]ompany may deploy to minimize or mitigate these risks.” The supporting statement in *Walmart 2021* urged the company to address a number of ordinary business topics in the requested risk report, including some (but not all) of those addressed here, in the Supporting Statement. Applying a traditional Rule 14a-8(i)(7) ordinary business analysis, the company argued that the topics all related to managing the company’s ordinary business activities, and the Staff concurred that the proposal could be excluded. Just as in *Walmart 2021*, the risk analysis requested by the Proposal and its Supporting Statement encompasses ordinary business matters, and does not focus on a significant social policy issue for purposes of Rule 14a-8(i)(7). Therefore, the Proposal is properly excludable under a traditional Rule 14a-8(i)(7) analysis.

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B. The Proposal Is Excludable Because It Relates To The Company's Assessment Of The Impact Of Government Regulation

The Staff has repeatedly concurred with the exclusion under Rule 14a-8(i)(7) of shareholder proposals seeking an assessment of the impact of proposed and current government regulation on a company's ordinary business matters. For example, in *General Electric Co.* (avail. Jan. 30, 2007), the proposal requested a report on legislative initiatives affecting the company, including the company's plans to "reduc[e] the impact on the [c]ompany of: unmeritorious litigation (lawsuit/tort reform); unnecessarily burdensome laws and regulations (e.g., Sarbanes-Oxley reform); and taxes on the [c]ompany (i.e., tax reform)." The Staff concurred with the exclusion of the proposal under Rule 14a-8(i)(7) because it involved evaluating the impact of government regulation on the company. *See also Yahoo! Inc.* (avail. Apr. 5, 2007) (concurring with the exclusion of a proposal calling for an evaluation of the impact on the company of expanded government regulation of the Internet); *General Electric Co.* (avail. Jan. 17, 2006) (concurring with the exclusion of a proposal relating to a report on the impact of a flat tax); *Niagara Mohawk Holdings, Inc.* (avail. Mar. 5, 2001) (concurring with the exclusion of a proposal requesting that the company report on pension-related issues being considered in federal regulatory and legislative proceedings).

As with the proposals in *Walmart 2021* and the other precedents cited above, the Proposal seeks an assessment of the impacts of proposed and current government regulation on ordinary business matters. In fact, each of the topics that the Proposal and Supporting Statement request the Company to address—the effects of federal and state legislation on (1) "costs to the company"; (2) "employee hiring, retention, and productivity"; (3) decisions regarding the location of Company operations; and (4) any public policy advocacy regarding such legislation—relates to management of the Company's ordinary business.

For example, the Proposal's request that the report regarding the impact of government regulation include details on "any known and any potential . . . costs to the company" demonstrates that the Proposal is excludable under Rule 14a-8(i)(7). As demonstrated by both *McDonald's* and *Exxon Mobil*, discussed above, proposals requesting a risk analysis involving "economic risks" and the management of costs and other expenses are excludable under Rule 14a-8(i)(7) because the management of such costs is an aspect of the Company's ordinary business.

As noted above, the Supporting Statement calls for the Proposal's requested report to address three matters that the Staff has repeatedly concurred relate to a company's ordinary business operations: employee hiring, retention, and productivity; the location of

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stores and other company operations; and decisions on whether to engage in political advocacy on a specific topic. Moreover, because the referenced legislation impacts the types of health benefits that the Company may offer to its employees, it also relates to the ordinary business matters of the Company's decisions regarding general employee benefits, as discussed in more detail below.

The Staff has repeatedly concurred that each of these topics implicate a company's ordinary business operations. *See, e.g., United Technologies Corp.* (avail. Feb. 19, 1993) (discussed below); *Capital Cities Communications, Inc.* (avail. Mar. 14, 1984) (concurring with the exclusion of a proposal requesting a written report of the company's policies on, among other matters, wages, benefits, pensions, and sick leave, as "relating to the conduct of the [c]ompany's ordinary business operations (i.e., employee compensation and employee relations)"); *Seagate Technology plc.* (avail. Aug. 8, 2021) (concurring with the exclusion of a proposal addressing the location of a company's operations); *Sears Roebuck & Co.* (avail. Mar. 6, 1980) (concurring with the exclusion of a proposal requesting that the board adopt a policy to favor store development in central business districts over placement of stores in suburban malls because it related to the "location of new [c]ompany facilities"); *Bristol-Myers Squibb Co.* (avail. Jan. 29, 2013, *recon. denied* Mar. 12, 2013) (concurring with the exclusion of a proposal requesting a report on the company's lobbying practices and expenditures where the supporting statement focused on the company's support of the Patient Protection and Affordable Care Act, noting that "the proposal and supporting statement, when read together, focus primarily on [the company's] specific lobbying activities that relate to the operation of [the company's] business and not on [the company's] general political activities"); *PepsiCo, Inc.* (avail. Mar. 3, 2011) (concurring with the exclusion of a proposal requesting that the board annually report on the company's process for identifying and prioritizing legislative and regulatory public policy advocacy activities where the supporting statement focused primarily on the company's lobbying efforts regarding "Cap and Trade" legislation).

The Company considers as appropriate the potential impact of proposed laws and regulations on its complex business. This involves a range of complex and dynamic considerations that implicate numerous aspects of the ordinary course operation of the Company's business, including those specifically called out in the Proposal and Supporting Statement. Accordingly, as with the precedents cited above, the Proposal seeks to subject to shareholder oversight ordinary business assessments that are within the scope of Rule 14a-8(i)(7) and as such may properly be excluded.

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C. *The Proposal Is Excludable Because It Relates To The Company's Management Of Its Workforce*

The Commission and Staff have long held that a shareholder proposal may be excluded under Rule 14a-8(i)(7) if it, like the Proposal, relates to the company's management of its workforce. As noted above, the Commission specifically recognized in the 1998 Release that "management of the workforce" is "fundamental to management's ability to run a company on a day-to-day basis." Similarly, in *United Technologies Corp.* (avail. Feb. 19, 1993), the Staff provided the following examples of topics that involve a company's ordinary business and thus make a proposal excludable under Rule 14a-8(i)(7): "*employee health benefits*, general compensation issues not focused on senior executives, *management of the workplace*, employee supervision, labor-management relations, *employee hiring and firing*, conditions of the employment and employee training and motivation" (emphases added).

Consistent with the 1998 Release and *United Technologies*, the Staff has recognized that a wide variety of proposals pertaining to the management of a company's workforce are excludable under Rule 14a-8(i)(7). For example, in *Intel Corp.* (avail. Mar. 18, 1999), the Staff concurred with the exclusion of a proposal seeking adoption of an "Employee Bill of Rights," which would have established various "protections" for the company's employees, including limited work-hour requirements, relaxed starting times, and a requirement that employees treat one another with dignity and respect. The Staff noted that the foregoing was excludable as "relating, in part, to Intel's ordinary business operations (i.e. management of the workforce)." See also *Amazon.com, Inc.* (avail. Apr. 1, 2020, recon. denied Apr. 9, 2020) (concurring with the exclusion of a proposal requesting a report on steps the company has taken to reduce the risk of accidents because "the [p]roposal focuses on workplace accident prevention, an ordinary business matter"); *Yum! Brands, Inc.* (avail. Mar. 6, 2019) (concurring with the exclusion of a proposal relating to adopting a policy not to "engage in any Inequitable Employment Practice" because it related "generally to the [c]ompany's policies concerning its employees and does not focus on an issue that transcends ordinary business matters"); *PG&E Corp.* (avail. Mar. 7, 2016) (concurring with the exclusion of a proposal requesting that the board institute a policy banning discrimination based on race, religion, donations, gender, or sexual orientation in hiring vendor contracts or customer relations, as relating to the company's ordinary business operations); *Apple, Inc. (Zhao)* (avail. Nov. 16, 2015) (concurring with the exclusion of a proposal asking the company's compensation committee to adopt new compensation principles responsive to the U.S.'s "general economy, such as unemployment, working hour and wage inequality," as relating to "compensation that may be paid to employees generally"); *Starwood Hotels & Resorts Worldwide, Inc.* (avail. Feb. 14, 2012) (concurring with the exclusion of a proposal requesting verification and

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documentation of U.S. citizenship for the company's U.S. workforce and requiring training for foreign workers in the U.S. to be minimized because it "relates to procedures for hiring and training employees" and "[p]roposals concerning a company's management of its workforce are generally excludable under Rule 14a-8(i)(7)"; *Northrop Grumman Corp.* (avail. Mar. 18, 2010) (concurring with the exclusion of a proposal requesting that the board identify and modify procedures to improve the visibility of educational status in the company's reduction-in-force review process, noting that "[p]roposals concerning a company's management of its workforce are generally excludable under [R]ule 14a-8(i)(7)").

In accordance with SLB 14E, discussed above, in analyzing the Proposal under Rule 14a-8(i)(7) it is necessary to examine whether "the underlying subject matter of the risk evaluation involves a matter of ordinary business to the company." As with the proposals in the foregoing precedents, the Proposal is directly concerned with the Company's management of its workforce because it seeks a report relating to risks involving the Company's employee policies and practices. Specifically, the Proposal asks for a report that evaluates risks related to "employee hiring, retention, and productivity" and an evaluation of strategies related to "human resources."

Moreover, while the recitals in the Proposal refer to considerations regarding the Company's employees and potential recruits, as a whole the Proposal and Supporting Statement relate to how certain policies impact the Company as an employer, referring to how "[e]mployers as well as employees bear the cost," potential difficulty in recruiting employees, and other "effects on employee hiring, retention, and productivity." These are all matters that relate to the Company's policies and practices regarding the management of a large, global workforce that was comprised of approximately 320,000 Associates as of January 30, 2021. Moreover, these decisions are multifaceted, complex, and based on a range of considerations that are integral to managing the day-to-day operations of the Company.

In addition, by indicating that the requested report should evaluate issues related to "reproductive health care," the Proposal would also require the Company to report on and consider the Company's benefit-related actions, programs, policies, and issues related to employee health benefits. Policies and practices relating to employees' health benefits are ordinary business matters as they concern the Company's relationship with its employees and its management of day-to-day operations. For these reasons, the Proposal is excludable under Rule 14a-8(i)(7) as relating to the management of the Company's workforce.

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D. The Proposal Does Not Focus On A Significant Social Policy Issue That Transcends The Company's Ordinary Business Operations

The well-established precedents set forth above demonstrate that the Proposal squarely addresses ordinary business matters such as the assessment of the impact of proposed and current government regulation on a company's ordinary business matters and, therefore, is excludable under Rule 14a-8(i)(7). In the 1998 Release, the Commission reaffirmed the standards for when proposals are excludable under the "ordinary business" provision that the Commission had initially articulated in Exchange Act Release No. 12999 (Nov. 22, 1976) (the "1976 Release"). In the 1998 Release, the Commission also distinguished proposals pertaining to ordinary business matters that are excludable under Rule 14a-8(i)(7) from those that "focus on" significant social policy issues. The Commission stated, "proposals relating to [ordinary business] matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." 1998 Release. When assessing proposals under Rule 14a-8(i)(7), the Staff considers the terms of the resolution and its supporting statement as a whole. See Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005).

In contrast, proposals that reference or touch on topics that might raise significant social policy issues—but which do not focus on or have only tangential implications for such issues—are not transformed from an otherwise ordinary business proposal into one that transcends ordinary business, and as such, remain excludable under Rule 14a-8(i)(7). For example, in *Dominion Resources, Inc.* (avail. Feb. 3, 2011), a proposal requested that the company promote "stewardship of the environment" by initiating a program to provide financing to home and small business owners for installation of rooftop solar or renewable wind power generation. Even though the proposal touched upon environmental matters, the Staff concluded that the subject matter of the proposal actually related to "the products and services offered for sale by the company" and therefore determined that the proposal could be excluded under Rule 14a-8(i)(7). *Id.* See also *Wells Fargo & Co. (Harrington Investments, Inc.)* (avail. Feb. 27, 2019) (concurring with the exclusion of a proposal raising multiple issues that may arguably have been of significance to the company, but failed to focus on any of them, as the "Resolved" clause focused on customer service); *Amazon.com, Inc. (Domini Impact Equity Fund)* (avail. Mar. 28, 2019) (concurring with the exclusion of a proposal that might have touched on significant sustainability concerns, but was so broadly worded the Staff concurred that the proposal did not focus on any single issue that transcended the company's ordinary business); *Deere & Co.* (avail. Nov. 14, 2014 *recon. denied* Jan. 5, 2016) (concurring with the exclusion of a proposal requesting the implementation and enforcement of a company-wide employee code of

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conduct that included an anti-discrimination policy where the proposal also related to the company's "policies concerning its employees," an ordinary business matter); *The TJX Companies, Inc.* (avail. Mar. 29, 2011) (concurring with the exclusion of a proposal requesting an annual assessment of the risks created by the actions the company takes to avoid or minimize U.S. federal, state and local taxes and a report to shareholders on the assessment as "relating to TJX's ordinary business operations" because "the proposal relates to decisions concerning the company's tax expenses and sources of financing"); *Apache Corp.* (avail. Mar. 5, 2008) (concurring with the exclusion of a proposal requesting the implementation of equal employment opportunity policies based on certain principles and noting that "some of the principles relate to Apache's ordinary business operations").

Further, in Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"), the Staff stated that it "will realign its approach for determining whether a proposal relates to 'ordinary business' with the standard the Commission initially articulated in [the 1976 Release], which provided an exception for certain proposals that raise significant social policy issues, and which the Commission subsequently reaffirmed in the 1998 Release." As such, the Staff stated that it will focus on the issue that is the subject of the shareholder proposal and determine whether it has "a broad societal impact, such that [it] transcend[s] the ordinary business of the company." The Staff noted further that "proposals squarely raising human capital management issues with a broad societal impact would not be subject to exclusion solely because the proponent did not demonstrate that the human capital management issue was significant to the company" (citing to the 1998 Release and *Dollar General Corp.* (avail. Mar. 6, 2020) and providing "significant discrimination matters" as an example of an issue that transcends ordinary business matters).

Here, the Proposal and its Supporting Statement do not focus on issues that implicate a significant social policy, such as discrimination, which the Staff recognized just last year in *Walmart 2021* when it concurred with the exclusion under Rule 14a-8(i)(7) of a substantially similar proposal with an almost identical resolved clause.

Moreover, even if the federal and state law developments discussed in the Proposal require the Company to revise the employee health benefits that it offers, that issue is not within the scope of the report requested by the Proposal, which expressly states that the requested report need not address the effects of "legal compliance." Instead, the Proposal and Supporting Statement address the financial and operational implications of the state and federal law developments referenced in the Proposal. The Staff consistently has concurred that shareholder proposals focused on a company's financial and economic risks do not raise a significant social policy issue, even if the risks arise as a result of factors that could be viewed as raising social policy issues. For example, in *Amazon.com, Inc.* (avail. Apr. 10, 2018), the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a proposal

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requesting that the company issue a report on company-wide efforts to assess, reduce and optimally manage food waste, where the company argued that the focus of the proposal was on the economic implications of food waste, which implicated the company's ordinary business. In *CVS Health Corp.* (avail. Mar. 8, 2016) the shareholder proposal at issue required the company to set targets to increase renewable energy sourcing, followed by several statements pointing to cost savings as a driving factor for the targets. The Staff concurred with exclusion under Rule 14a-8(i)(7), reflecting the company's argument that the proposal "reveal[s] a central theme of financial management" in the form of cost savings. In *Exxon Mobil Corp.* (avail. Mar. 6, 2012), the company received a proposal requesting a report on "possible short and long term risks to the company's finances and operations" related to the company's oil sands operation. The proposal sought a review of the risks "posed by the environmental, social and economic challenges associated with the oil sands." The company argued that "[a]ssessing financial and operational risks posed by the challenges associated with oil sands [was] an intricate process" and decisions related to the oil sands were "fundamental to management's ability to run the Company on a day-to-day basis" The Staff permitted the exclusion of the proposal because it "addresse[d] the 'economic challenges' associated with the oil sands and [did] not, in [the Staff's] view, focus on a significant policy issue."

Additionally, the Proposal covers a broad scope of laws. In addition to the specific request in the resolved clause, the Supporting Statement indicates the requested report should also address "new laws and legislation severely restricting *reproductive health care*" (emphasis added), which is a much broader category than the sole category of "reproductive rights" referenced in the proposal in *Walmart 2021*. The breadth of laws covered by the Proposal is similar to the breadth of laws covered by the proposal at issue in *PetSmart, Inc.* (avail. Mar. 24, 2011). In *PetSmart*, the Staff concurred with the exclusion of a proposal requesting the board require its suppliers to certify they had not violated "the Animal Welfare Act, the Lacey Act, or any state law equivalents" because "[a]lthough the humane treatment of animals is a significant policy issue . . . the scope of the laws covered by the proposal is 'fairly broad in nature from serious violations such as animal abuse to violations of administrative matters such as record keeping.'" By indicating that the requested report should also cover issues related to "reproductive health care," the scope of the Proposal encompasses laws related to a wide variety of common healthcare matters that affect all people. Thus, regardless of the treatment under Rule 14a-8(i)(7) of the specific examples of reproductive rights listed in the Proposal, "the scope of the laws covered by the proposal is 'fairly broad in nature,'" just as in *PetSmart*.

Finally, the Proposal is distinguishable from the proposal in *The Procter & Gamble Co.* (avail. Aug. 16, 2016). There, the proposal requested a report on the risks and costs to the company of certain "enacted or proposed state policies *supporting discrimination*

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against LGBT people” and “detailing strategies . . . the [c]ompany may *deploy to defend* [its] LGBT employees and their families *against discrimination and harassment* that is encouraged or enabled by the policies” (emphases added). The recitals described the company’s efforts to provide resources for and protect its LGBT employees from discrimination before noting that geographies in which it operated were enacting “pro-discrimination policies” that “legalize[d] discrimination against LGBT individuals.” Thus, the proposal focused on the risks and costs to the company arising from its engagement with the issue of discrimination against LGBT persons. In light of that focus, the Staff was unable to concur with the exclusion of the proposal under Rule 14a-8(i)(7) as a matter relating to the company’s ordinary business operations. By contrast, the Proposal does not focus on the Company’s role in addressing a significant social policy issue that transcends the Company’s ordinary business operations for purposes of Rule 14a-8(i)(7). Instead, the requested report seeks “any” risks and costs to the Company that arise from “state policies.” In addition, as discussed above, the Proposal seeks a report analyzing the risks and costs with respect to a variety of ordinary business matters, including related to “employee hiring, retention, and productivity” and “decisions regarding closure or expansion of operations in [certain] states.” Therefore, unlike the proposal in *Procter & Gamble*, the Proposal does not focus on significant social policy issues for purposes of Rule 14a-8(i)(7), but addresses ordinary business matters arising from the Company’s operations.

As discussed above, the Proposal, in asking the Company to report on “any known and any potential risks and costs to the Company caused by enacted or proposed state policies severely restricting access to reproductive rights, and detailing any strategies . . . to minimize or mitigate these risks,” encompasses the Company’s ordinary business operations. The Proposal does not focus on a significant social policy issue for purposes of Rule 14a-8(i)(7). Instead, the subject matter of the Proposal directly relates to the Company’s ordinary business operations, including the Company’s assessment of the impact of government regulation on its operations and the Company’s management of its workforce. Accordingly, and consistent with the precedents cited above, the Company believes that the Proposal may be excluded from its 2022 Proxy Materials under Rule 14a-8(i)(7).

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CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2022 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8287 or Alicia C. Kelly, Executive Vice President, General Counsel and Secretary at the Company, at (508) 740-8381.

Sincerely,



Elizabeth A. Ising

Enclosures

cc: Alicia C. Kelly, The TJX Companies, Inc.
Jonas Kron, Trillium Asset Management
Marcela I. Pinilla, Zevin Asset Management, LLC

EXHIBIT A



December 27, 2021

The TJX Companies, Inc.
Attention: Corporate Secretary
770 Cochituate Road
Framingham, MA 01701

Re: Shareholder proposal for 2022 Annual Shareholder Meeting

Dear Corporate Secretary:

Trillium ESG Global Equity Fund is submitting the attached proposal (the "Proposal") pursuant to the Securities and Exchange Commission's Rule 14a-8 to be included in the proxy statement of The TJX Companies, Inc. (the "Company") for its 2022 annual meeting of shareholders.

Per Rule 14a-8, Trillium ESG Global Equity Fund holds more than \$25,000 of the Company's common stock, acquired more than one year prior to today's date and held continuously for that time. Trillium ESG Global Equity Fund intends to hold the required number of shares continuously through the date of the 2022 annual meeting. Verification of Trillium ESG Global Equity Fund's ownership will be sent separately. Trillium ESG Global Equity Fund will send a representative to the stockholders' meeting to move the shareholder proposal as required by the SEC rules.

The Proposal, which the Fund supports, requests that the company issue a public report prior to December 31, 2022, omitting confidential and privileged information and at a reasonable expense, detailing any known and any potential risks and costs to the company caused by enacted or proposed state policies severely restricting reproductive rights, and detailing any strategies beyond litigation and legal compliance that the company may deploy to minimize or mitigate these risks.

Trillium ESG Global Equity Fund is available to meet with the Company on Friday, January 21, 2022 at 11-11:30 am ET or Friday, January 21, 2022 at 3-3:30 pm ET. Please let us know within 10 days if the Company would like to meet at one of these times. After 10 days we may no longer be able to hold these dates and times.

I can be contacted at [REDACTED] or by email at [REDACTED] and request a confirmation of receipt of this letter via email.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jonas Kron", with a long horizontal flourish extending to the right.

Jonas Kron
Chief Advocacy Officer

Enclosures

Active Portfolios, Global Impact: Putting Assets into Action since 1982

Resolution for TJX 2022 Shareholder Meeting
Filed by Trillium Asset Management

Access to abortion is being challenged at the state and federal level in the U.S. A patchwork of laws regulates access to abortion and broader reproductive rights. Since 2011, state legislatures have passed more than 600 restrictive laws. Other states have enacted legislation that protects these rights. Eleven states ban abortion coverage in all state-regulated private insurance plans, while six states require private insurance plans to cover abortion.

TJX Companies, Inc. (“TJX”) has operations in all fifty states, subject to this patchwork of laws. Should *Roe v. Wade* be weakened or overturned, as is widely anticipated, TJX employees will face challenges accessing abortion care. In 2021, 40% of TJX’s stores in the U.S. and Puerto Rico were in states that could immediately prohibit abortion entirely under this scenario.

Employers as well as employees bear the cost of restricted access to health reproductive health care. For example, women who cannot access abortion are three times more likely to leave the workforce than women who were able to access abortion when needed. The Institute for Women’s Policy Research estimates that state-level abortion restrictions annually keep more than 500,000 women aged 15 to 44 out of the workforce. (<https://bit.ly/3Dt5bQq>)

If *Roe vs. Wade* is weakened or overturned, more than 25 states may ban or severely restrict abortion access. Should that occur, TJX may find it more difficult to recruit employees to locations where abortion is outlawed. (<https://bit.ly/3Ctj3Zl>) This may harm its ability to meet diversity and inclusion goals, with negative consequences to performance, brand and reputation.

In a nationwide survey of U.S. consumers in 2021, 64% said employers should ensure that employees have access to the reproductive health care they need, and 42% would be more likely to buy from a brand that publicly supported reproductive health care. (<https://bit.ly/3nmzd2U>) Surveys consistently show that a majority of Americans want to keep the *Roe v. Wade* framework intact. (<https://wapo.st/3cmRLK2>)

RESOLVED: Shareholders request that TJX issue a public report prior to December 31, 2022, omitting confidential and privileged information and at a reasonable expense, detailing any known and any potential risks and costs to the company caused by enacted or proposed state policies severely restricting reproductive rights, and detailing any strategies beyond litigation and legal compliance that the company may deploy to minimize or mitigate these risks.

SUPPORTING STATEMENT: Shareholders recommend that the report evaluate any risks and costs to the company associated with new laws and legislation severely restricting reproductive health care, and similar restrictive laws proposed or enacted in other states. In its discretion, the board’s analysis may include any effects on employee hiring, retention, and productivity, and decisions regarding closure or expansion of operations in states proposing or enacting restrictive laws and strategies such as any public policy advocacy by the company, related political contributions policies, and human resources or educational strategies.



The TJX Companies, Inc.
Attention: Corporate Secretary
770 Cochituate Road
Framingham, MA 01701

December 29, 2021

Via email: jill_digiovanni@tjx.com; alicia_kelly@tjx.com, erika_tower@tjx.com, debra_mcconnell@tjx.com
Re: Shareholder proposal for 2022 Annual Shareholder Meeting

Dear Corporate Secretary,

Zevin Asset Management is an investment manager that integrates financial and environmental, social, and governance (ESG) research into investment decision-making on behalf of our clients. We are submitting the attached proposal that requests that the company issue a public report detailing any known and any potential risks and costs to the company caused by enacted or proposed state policies severely restricting reproductive rights and detailing any strategies beyond litigation and legal compliance that the company may deploy to minimize or mitigate these risks.

Zevin Asset Management is submitting the attached shareholder proposal, on behalf of James T. Campen ("Proponent"), a shareholder of The TJX Companies, Inc. (TJX) for inclusion in the Company's 2022 proxy statement in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934 (17 C.F.R. § 240.14a-8).

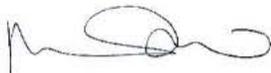
Per Rule 14a-8, Proponent holds more than \$2,000 of the Company's common stock, acquired more than three years prior to today's date and held continuously for that time. Proponent intends to hold such shares continuously through the date of the 2022 annual meeting. Verification of Proponent's ownership will be sent separately.

Zevin Asset Management is co-filing this resolution with Trillium ESG Global Equity Fund as the lead filer. We are available to meet with the Company on Friday, January 21, 2022, at 11-11:30 am ET or Friday, January 21, 2022, at 3-3:30 pm ET., within the company's business hours according to their time zone. Please let us know within 10 days if the Company would like to meet at one of these times. After 10 days we may no longer be able to hold these dates and times.

A letter from the Proponent authorizing Zevin Asset Management to act as representative on its behalf is forthcoming. A representative of the Proponent will attend the stockholders' meeting to move the shareholder proposal as required by the SEC rules.

Please provide a confirmation of receipt of this letter. Please address any future correspondence regarding the proposal to me at [REDACTED].

Sincerely,



Marcela I. Pinilla
Director of Sustainable Investing
Zevin Asset Management, LLC



Zevin Asset Management

The TJX Companies, Inc.
Attention: Corporate Secretary
770 Cochituate Road
Framingham, MA 01701
Via email:

January 5, 2022

Re: Shareholder proposal for 2022 Annual Shareholder Meeting

Dear Corporate Secretary:

I hereby authorize Zevin Asset Management to file a shareholder resolution on my behalf for The TJX Companies, Inc. (TJX) 2022 annual shareholder meeting. The proposal is requesting that the company issue a public report detailing any known and any potential risks and costs to the company caused by enacted or proposed state policies severely restricting reproductive rights and detailing any strategies beyond litigation and legal compliance that the company may deploy to minimize or mitigate these risks.

I am supportive of this proposal because more disclosure on issues relating to corporate disclosure of risks and opportunities relating to employee benefits and rights is welcomed by the investor community, employees, and other stakeholders. I specifically give Marcela Pinilla, Director of Sustainable Investing, full authority to be my representative, engage with the company on my behalf regarding the proposal and the underlying issues, and to negotiate a withdrawal of the proposal to the extent the representative views of the company's actions as responsive. I intend to hold the requisite shares during and through the 2022 annual meeting.

I understand that I may be identified on the corporation's proxy statement as the filer of the aforementioned resolution.

Sincerely,

James T. Campen

Resolution for TJX 2022 Shareholder Meeting
Filed by Trillium Asset Management

Access to abortion is being challenged at the state and federal level in the U.S. A patchwork of laws regulates access to abortion and broader reproductive rights. Since 2011, state legislatures have passed more than 600 restrictive laws. Other states have enacted legislation that protects these rights. Eleven states ban abortion coverage in all state-regulated private insurance plans, while six states require private insurance plans to cover abortion.

TJX Companies, Inc. ("TJX") has operations in all fifty states, subject to this patchwork of laws. Should *Roe v. Wade* be weakened or overturned, as is widely anticipated, TJX employees will face challenges accessing abortion care. In 2021, 40% of TJX's stores in the U.S. and Puerto Rico were in states that could immediately prohibit abortion entirely under this scenario.

Employers as well as employees bear the cost of restricted access to health reproductive health care. For example, women who cannot access abortion are three times more likely to leave the workforce than women who were able to access abortion when needed. The Institute for Women's Policy Research estimates that state-level abortion restrictions annually keep more than 500,000 women aged 15 to 44 out of the workforce. (<https://bit.ly/3Dt5bQq>)

If *Roe vs. Wade* is weakened or overturned, more than 25 states may ban or severely restrict abortion access. Should that occur, TJX may find it more difficult to recruit employees to locations where abortion is outlawed. (<https://bit.ly/3Ctj3Zl>) This may harm its ability to meet diversity and inclusion goals, with negative consequences to performance, brand and reputation.

In a nationwide survey of U.S. consumers in 2021, 64% said employers should ensure that employees have access to the reproductive health care they need, and 42% would be more likely to buy from a brand that publicly supported reproductive health care. (<https://bit.ly/3nmzd2U>) Surveys consistently show that a majority of Americans want to keep the *Roe v. Wade* framework intact. (<https://wapo.st/3cmRLK2>)

RESOLVED: Shareholders request that TJX issue a public report prior to December 31, 2022, omitting confidential and privileged information and at a reasonable expense, detailing any known and any potential risks and costs to the company caused by enacted or proposed state policies severely restricting reproductive rights, and detailing any strategies beyond litigation and legal compliance that the company may deploy to minimize or mitigate these risks.

SUPPORTING STATEMENT: Shareholders recommend that the report evaluate any risks and costs to the company associated with new laws and legislation severely restricting reproductive health care, and similar restrictive laws proposed or enacted in other states. In its discretion, the board's analysis may include any effects on employee hiring, retention, and productivity, and decisions regarding closure or expansion of operations in states proposing or enacting restrictive laws and strategies such as any public policy advocacy by the company, related political contributions policies, and human resources or educational strategies.



March 7, 2022

Via e-mail at shareholderproposals@sec.gov

Securities and Exchange Commission Office of the Chief Counsel
Division of Corporation Finance
100 F Street, NE
Washington, DC 20549

Re: Shareholder Proposal Submitted by Trillium ESG Global Equity Fund and James T. Campen

Ladies and Gentlemen,

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, Trillium ESG Global Equity and James T. Campen (together, the "Proponents") submitted a shareholder proposal (the "Proposal") to The TJX Companies, Inc. ("TJX" or the "Company"). In a letter to the Division dated February 7, 2022 (the "No-Action Request"), the Company stated that it intends to omit the Proposal from its proxy materials to be distributed to shareholders in connection with the 2022 annual meeting of shareholders. TJX argues that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(7). However, as discussed below, TJX has not met its burden under Rule 14a-8(g) of proving it is entitled to exclude the Proposal. Therefore, the Proponents ask that its request for relief be denied.

The Proposal states:

Resolved: Shareholders request that TJX issue a public report prior to December 31, 2022, omitting confidential and privileged information and at a reasonable expense, detailing any known and any potential risks and costs to the company caused by enacted or proposed state policies severely restricting reproductive rights, and detailing any strategies beyond litigation and legal compliance that the company may deploy to minimize or mitigate these risks.

The Proposal is not excludable under Rule 14a-8(i)(7).

In Staff Legal Bulletin ("SLB"), 14L (November 2021), the Division of Corporation Finance stated that it will apply the ordinary business standard the Commission provided in 1976, which articulated an exception for shareholder proposals that raise significant social policy issues, and which the Commission reaffirmed in its 1998 Interpretive Release of the rule. This significant social policy exception protects the critically important shareholder right to bring significant

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issues before other shareholders via the proxy statement even though it may implicate the day-to-day business matters that are the typical province of management. As such, pursuant SLB 14L, the staff will not focus on the particular implications of the policy issue on the day-to-day business matters of the company but instead, it will place analytical emphasis on the social policy significance of the issue that is the shareholder proposal focuses on. Accordingly, in keeping with the 1976 and 1998 Commission articulations of the 14a-8(i)(7) standard, the staff will seek to determine whether the company has met its burden of demonstrating that societal impact identified in the proposal does not transcend the ordinary business of the company. Finally, SLB 14L noted that recent Staff application of the micromanagement portion of the exclusion “expanded the concept of micromanagement beyond the Commission’s policy directives” and “may have been taken to mean that any limit on company or board discretion constitutes micromanagement.” Accordingly, SLB 14L made clear that from now on when considering micromanagement, the Staff “will focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management.”

The Proposal Focuses on a Significant Policy Issue.¹

Reproductive rights are a subject of major public debate, and are under siege in the US at both the state and federal levels. As the Proposal notes, sweeping state legislation restricting contraception and abortion has occurred within the last decade, with state legislatures passing more than 500 restrictive laws since 2011; in 2021, more restrictions were passed at the state level than in any year since 1973, the year in which *Roe v. Wade* legalized the procedure nationwide.² A potential reversal of *Roe v. Wade* by the Supreme Court is seen as increasingly likely. Within the past year, the fate of *Roe v. Wade* has become increasingly less certain. Last month, the U.S. Supreme Court denied abortion providers’ request to send their challenge to the Texas Heartbeat Act (“SB 8”) back to federal district court.³ While the case works its way back through state and federal judicial systems, the Texas law remains in place. In allowing SB 8 to stand, the Court has given the restrictive law viability and the capacity to effectively ban

¹ The following section is substantially the same as Sanford Lewis’s February 25, 2022 proponent reply to a Walmart no-action request regarding an identical proposal. We note that the Walmart no-action request is very similar to the TJX no-action request and to the extent relevant we incorporate the arguments made by Sanford Lewis’s February 25, 2022 letter and attach it here.

² “State Policy Trends 2021: The Worst Year for Abortion Rights in Almost Half a Century,” Guttmacher Institute (December 16, 2021), <https://www.guttmacher.org/article/2021/12/state-policy-trends-2021-worst-year-abortion-rights-almost-half-century>.

³ *In re Whole Woman’s Health*, 595 U.S. ____ No. 21–962 (2022).

abortions within the state⁴; clinics in Oklahoma, Kansas, New Mexico, Colorado, Louisiana, and southern Nevada have seen a dramatic surge in patients.⁵

SB 8 prohibits abortions once medical professionals can detect electrical activity within the gestational sac (although there is no heart at this stage of development) —usually around six weeks—which is before most women are aware of pregnancy.⁶ In another case carrying similar implications for reproductive rights, the Supreme Court is considering a 2018 Mississippi law that bans abortions after fifteen weeks (*Dobbs v. Jackson Women’s Health Organization*), well before viability. During oral arguments, which took place on December 1, 2021, all six conservative justices indicated that they would uphold Mississippi’s law.⁷ The case is currently pending adjudication before the Court.

Gretchen Borchelt, Vice President of Reproductive Rights and Health for the National Women's Law Center, has called this a “crisis moment” for abortion and reproductive freedom.⁸ Currently, 21 states have laws that could be used to restrict the legal status of abortion, with 10 states having “trigger laws” that would automatically ban all or nearly all abortions if Roe were overturned by the Supreme Court.⁹ The Guttmacher Institute reports that 58% of women in the U.S. ages 13-44 live in a state hostile or extremely hostile to abortion rights, and only 38% live in a state supportive of reproductive rights.¹⁰ Considering such statistics, it is difficult to imagine how reproductive rights, the focus of the Proposal, could not be a significant policy issue.

⁴ Jessica Gresko, *Divided Supreme Court Leaves Texas Abortion Law in Place*, PBS (September 2, 2021), <https://www.pbs.org/newshour/nation/divided-supreme-court-leaves-texas-abortion-law-in-place>.

⁵ “Texas’ six-week abortion ban is still causing more than twice as many patients at clinics in nearby states,” The 19th, February 11, 2022 at <https://19thnews.org/2022/02/texas-abortion-ban-patients-clinics-surrounding-states/>.

⁶ “Here’s What the Texas Abortion Law Says,” *New York Times* (Sept. 9, 2021) at <https://www.nytimes.com/article/abortion-law-texas.html?searchResultPosition=1>.

⁷ *Justices’ Abortion Remarks: Is it Time to Overturn Roe?*, Associated Press (Dec. 2, 2021), <https://apnews.com/article/abortion-justices-remarks-a080dd81bb09bf6be48454f199831fd8>.

⁸ Chloe Atkins, “‘A crisis moment’: States, advocates brace for new fight over abortion rights,” NBC News, January 11, 2021, <https://www.nbcnews.com/politics/politics-news/crisis-moment-states-advocates-brace-new-fight-over-abortion-rights-n1253665>.

⁹ “Abortion Policy in the Absence of Roe,” Guttmacher Institute, <https://www.guttmacher.org/state-policy/explore/abortion-policy-absence-roe#>.

¹⁰ “United States,” Guttmacher Institute, <https://www.guttmacher.org/geography/united-states>; see also *United States Abortion*, Guttmacher Institute, <https://www.guttmacher.org/united-states/abortion>.

Both the Texas and Mississippi laws pose direct challenges to the current legal framework established by *Roe* and *Casey*, which offers federal constitutional protection to women’s rights to abortions prior to fetal viability; viability typically occurs at around twenty-four weeks.¹¹ With the conservative majority in the Supreme Court, states are recognizing the potential for reversal and proposing significant constraints on reproductive rights. As a result of the Court’s willingness to reconsider the precedential framework, more than twenty other states have prepared laws to ban or dramatically restrict abortions if *Roe* is overturned.¹² And as noted above, the pace at which restrictions are being enacted is accelerating. If the Court overturns its prior decisions and eliminates federal constitutional protections for abortion, it is predicted that twenty-six states are certain or likely to ban abortion.¹³ Further, lawmakers in eleven states have introduced or circulated legislation that mirror Texas’s law, and lawmakers in seven additional states have express intent to do so.

TJX has operations in all fifty states and over 275,000 employees globally.¹⁴ This means its significant workforce is subject to this patchwork of laws. In addition, in its 2020 CSR Report, it reports 78% of its global workforce is female and 67% of its managers are female.¹⁵ Should *Roe v. Wade* be weakened or overturned, as is widely anticipated, TJX employees will face challenges accessing abortion care. In 2021, 40% of TJX’s stores in the U.S. and Puerto Rico were in states that could immediately prohibit abortion entirely under this scenario.

Accordingly, we believe that it is clear that the Proposal focuses on a significant policy issue to the Company that is subject to widespread public debate. Accordingly, we respectfully request the Staff conclude that the Company has not met its burden under the rule.

¹¹ *Roe v. Wade*, 410 U.S. 113 (1973); *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992).

¹² “With *Roe* in Doubt, States Act on Abortion Limits, Expansions,” Associated Press (January 22, 2022), <https://apnews.com/article/us-supreme-court-health-texas-legislature-state-legislature-c8c8386304b7188a1b9712a52f0535e4>.

¹³ “State Policy Trends: The Worst Year for Abortion Rights in Almost Half a Century,” Guttmacher Institute (updated January 5, 2022), <https://www.guttmacher.org/article/2021/12/state-policy-trends-2021-worst-year-abortion-rights-almost-half-century>.

¹⁴ <https://www.tjx.com/docs/default-source/annual-reports/tjx-2020-annual-report-and-10-k.pdf>

¹⁵ <https://www.tjx.com/docs/default-source/corporate-responsibility/tjx-2020-global-corporate-responsibility-report.pdf>

Conclusion

For the reasons set forth above, the Proponents respectfully ask that TJX's request for relief be denied.

The Proponents appreciate the opportunity to be of assistance in this matter. If you have any questions or need additional information, please contact me at 413-522-2899.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jonas D. Kron', with a stylized flourish at the end.

Jonas D. Kron

Cc: Elizabeth Ising
Gibson Dunn
EIsing@gibsondunn.com

SANFORD J. LEWIS, ATTORNEY

PO Box 231
Amherst, MA 01004-0231
413 549-7333
sanfordlewis@strategiccounsel.net

February 25, 2022
Via electronic mail

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Shareholder Proposal to Walmart Inc. on Behalf of Julie Kalish

Ladies and Gentlemen:

Julie Kalish (“Proponent”) is beneficial owner of common stock of Walmart Inc. (the “Company”) and has submitted a shareholder proposal (the “Proposal”) via Clean Yield Management to the Company. I have been asked by the Proponent to respond to the letter dated January 31, 2022 (“Company Letter”) sent to the Securities and Exchange Commission by Kristopher Isham. In that letter, the Company contends that the Proposal may be excluded from the Company’s 2022 proxy statement. A copy of this letter is being emailed concurrently to Mr. Isham.

SUMMARY

The Proposal requests that the Company issue a public report detailing any known and any potential risks and costs to the Company caused by enacted or proposed state policies affecting reproductive rights and detailing any strategies beyond litigation and legal compliance that the Company may deploy to minimize or mitigate these risks. The Supporting Statement adds that shareholders recommend that the report evaluate any risks and costs including, but not limited to: effects on employee hiring, retention, and productivity, and increases in litigation and brand risks. Strategies evaluated should include any public policy advocacy programs, political contribution policies, and human resources or educational strategies. The full proposal text is appended.

The Company seeks exclusion of the Proposal on the basis of Rule 14a-8(i)(7), asserting that it does not address a significant policy issue and merely relates to the Company’s ordinary business operations — the Company’s assessment of the impact of the government regulation and management of its workforce.

However, the Proposal is focused solely on the issue of reproductive rights, a significant and contentious public issue, which has a meaningful connection to the Company’s business. It does not inappropriately focus on government relations or workforce management. The Proposal follows numerous proposals previously found by the Staff not to be excludable under the ordinary business rule, *assessing the impact of significant policy issues on the company*. Therefore, it transcends ordinary business and is not excludable under Rule 14a-8(i)(7).

ANALYSIS

Rule 14a-8(i)(7)

The Proposal requests that the Company issue a public report detailing any known and any potential risks and costs to the Company caused by enacted or proposed state policies affecting reproductive rights and detailing any strategies beyond litigation and legal compliance that the Company may deploy to minimize or mitigate these risks. The Supporting Statement adds that shareholders recommend that the report evaluate any risks and costs including, but not limited to: effects on employee hiring, retention, and productivity, and increases in litigation and brand risks. Strategies evaluated should include any public policy advocacy programs, political contribution policies, and human resources or educational strategies. The full proposal text is appended.

The Company seeks exclusion of the Proposal based on Rule 14a-8(i)(7), asserting that it does not address a significant policy issue and merely relates to the Company's ordinary business operations — the Company's assessment of the impact of the government regulation and management of its workforce.

However, the Proposal is focused solely on the issue of reproductive rights, an issue of transcendent public concern and controversy, which has a meaningful connection to the Company's business. Contrary to the Company's citations and arguments, the Staff has made it clear that a proposal requesting a report on the impact of a significant policy issue on a company, even if it touches on matters of ordinary business, is not excludable under Rule 14a-8(i)(7). As such, the fact that the current proposal encourages the Company to report, in its discretion, on the impact of changes in reproductive rights on issues of workforce management does not cause the proposal to be excludable.

Thus, the Proposal is not excludable for purposes of Rule 14a-8(i)(7).

Ordinary Business According to the Commission

In 1998, the Commission issued a rulemaking release ("1998 Release") updating and interpreting the ordinary business rule, by both reiterating and clarifying past precedents. That release was the last time that the Commission discussed and explained at length the meaning of the ordinary business exclusion. The Commission summarized two central considerations in making ordinary business determinations — whether the proposal addresses a significant social policy issue, and whether it micromanages.

First, the Commission noted that certain tasks were generally considered so fundamental to management's ability to run a company on a day-to-day basis that they could not be subject to direct shareholder oversight (e.g., the hiring, promotion, and termination of employees, as well as decisions on retention of suppliers, and production quality and quantity). However, proposals related to such matters but focused on sufficiently significant social policy issues (i.e., significant discrimination matters) generally would not be excludable.

Second, proposals could be excluded to the extent they seek to "micromanage" a company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would be unable to make an informed judgment. This concern did not, however, result in the exclusion of all proposals seeking detailed timeframes or methods. Proposals that passed the first prong but for which the wording involved some degree of micromanagement could be subject to a case-by-case analysis of whether the proposal probes too deeply for shareholder deliberation.

The Proposal addressing reproductive rights issues is focused on a significant policy issue transcending ordinary business and not excludable under Rule 14a-8(i)(7)

The Proposal is focused on the risks and costs to the company by policies affecting reproductive rights.¹

Reproductive rights are a subject of major public debate, and are under siege in the US at both the state and federal levels. As the Proposal notes, sweeping state legislation restricting contraception and abortion has occurred within the last decade, with state legislatures passing more than 500 restrictive laws since 2011; in 2021, more restrictions were passed at the state level than in any year since 1973, the year in which *Roe v. Wade* legalized the procedure nationwide.² A potential reversal of *Roe v. Wade* by the Supreme Court is seen as increasingly likely. Within the past year, the fate of *Roe v. Wade* has become increasingly less certain. Last month, the U.S. Supreme Court denied abortion providers' request to send their challenge to the Texas Heartbeat Act ("SB 8") back to federal district court.³ While the case works its way back through state and federal judicial systems, the Texas law remains in place. In allowing SB 8 to stand, the Court has given the restrictive law viability and the capacity to effectively ban abortions within the state⁴; clinics in Oklahoma, Kansas, New Mexico, Colorado, Louisiana, and southern Nevada have seen a dramatic surge in patients.⁵

SB 8 prohibits abortions once medical professionals can detect electrical activity within the gestational sac (although there is no heart at this stage of development) —usually around six weeks—which is before most women are aware of pregnancy.⁶ In another case carrying similar implications for reproductive rights, the Supreme Court is considering a 2018 Mississippi law that bans abortions after fifteen weeks (*Dobbs v. Jackson Women's Health Organization*), well before viability. During oral arguments, which

¹ See *Hidden Value: The Business Case for Reproductive Health*, Rhia Ventures, 2020.

² "State Policy Trends 2021: The Worst Year for Abortion Rights in Almost Half a Century," Guttmacher Institute (December 16, 2021), <https://www.guttmacher.org/article/2021/12/state-policy-trends-2021-worst-year-abortion-rights-almost-half-century>.

³ *In re Whole Woman's Health*, 595 U.S. ____ No. 21–962 (2022).

⁴ Jessica Gresko, *Divided Supreme Court Leaves Texas Abortion Law in Place*, PBS (September 2, 2021), <https://www.pbs.org/newshour/nation/divided-supreme-court-leaves-texas-abortion-law-in-place>.

⁵ "Texas' six-week abortion ban is still causing more than twice as many patients at clinics in nearby states," *The 19th*, February 11, 2022 at <https://19thnews.org/2022/02/texas-abortion-ban-patients-clinics-surrounding-states/>.

⁶ "Here's What the Texas Abortion Law Says," *New York Times* (Sept. 9, 2021) at <https://www.nytimes.com/article/abortion-law-texas.html?searchResultPosition=1>.

took place on December 1, 2021, all six conservative justices indicated that they would uphold Mississippi's law.⁷ The case is currently pending adjudication before the Court.

Gretchen Borchelt, Vice President of Reproductive Rights and Health for the National Women's Law Center, has called this a "crisis moment" for abortion and reproductive freedom.⁸ Currently, 21 states have laws that could be used to restrict the legal status of abortion, with 10 states having "trigger laws" that would automatically ban all or nearly all abortions if *Roe* were overturned by the Supreme Court.⁹ The Guttmacher Institute reports that 58% of women in the U.S. ages 13-44 live in a state hostile or extremely hostile to abortion rights, and only 38% live in a state supportive of reproductive rights.¹⁰ Considering such statistics, it is difficult to imagine how reproductive rights, the focus of the Proposal, could not be a significant policy issue.

Both the Texas and Mississippi laws pose direct challenges to the current legal framework established by *Roe* and *Casey*, which offers federal constitutional protection to women's rights to abortions prior to fetal viability; viability typically occurs at around twenty-four weeks.¹¹ With the conservative majority in the Supreme Court, states are recognizing the potential for reversal and proposing significant constraints on reproductive rights. As a result of the Court's willingness to reconsider the precedential framework, more than twenty other states have prepared laws to ban or dramatically restrict abortions if *Roe* is overturned.¹² And as noted above, the pace at which restrictions are being enacted is accelerating. If the Court overturns its prior decisions and eliminates federal constitutional protections for abortion, it is predicted that twenty-six states are certain or likely to ban abortion.¹³ Further, lawmakers in eleven states have introduced or circulated legislation that mirror Texas's law, and lawmakers in seven additional states have express intent to do so.

⁷ *Justices' Abortion Remarks: Is it Time to Overturn Roe?*, Associated Press (Dec. 2, 2021), <https://apnews.com/article/abortion-justices-remarks-a080dd81bb09bf6be48454f199831fd8>.

⁸ Chloe Atkins, "A crisis moment: States, advocates brace for new fight over abortion rights," NBC News, January 11, 2021, <https://www.nbcnews.com/politics/politics-news/crisis-moment-states-advocates-brace-new-fight-over-abortion-rights-n1253665>.

⁹ "Abortion Policy in the Absence of *Roe*," Guttmacher Institute, <https://www.guttmacher.org/state-policy/explore/abortion-policy-absence-roe#>.

¹⁰ "United States," Guttmacher Institute, <https://www.guttmacher.org/geography/united-states>; see also United States Abortion, Guttmacher Institute, <https://www.guttmacher.org/united-states/abortion>.

¹¹ *Roe v. Wade*, 410 U.S. 113 (1973); *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992).

¹² "With *Roe* in Doubt, States Act on Abortion Limits, Expansions," Associated Press (January 22, 2022), <https://apnews.com/article/us-supreme-court-health-texas-legislature-state-legislature-c8c8386304b7188a1b9712a52f0535e4>.

¹³ "State Policy Trends: The Worst Year for Abortion Rights in Almost Half a Century," Guttmacher Institute (updated January 5, 2022), <https://www.guttmacher.org/article/2021/12/state-policy-trends-2021-worst-year-abortion-rights-almost-half-century>.

Reproductive rights issues are significantly related to the Company and transcend ordinary business operations.

The issue of reproductive rights has significant relation to the Company. Walmart has a total of 2,818 stores in 21 restrictive abortion law states, which amounts to ~53% of its total stores in the U.S. Walmart also has 267 stores in states with only 1 reported abortion clinic as of 2017.

The location of the Company's headquarters, Arkansas, is classified as a "hostile" state according to the Center for Reproductive Rights and will likely try to prohibit abortion should *Roe* be weakened or overturned.¹⁴ Arkansas enacted a trigger ban in 2019, and has numerous medically unnecessary abortion restrictions.

This hostility towards reproductive health has a direct impact on both employer costs and employee productivity and health. As the proposal notes, a 2016 study estimated that denying female employees full coverage of contraceptives increases unexpected pregnancies and terminations, and increases employer costs associated with employee absenteeism, decreased productivity, and employee replacement. Women who cannot access abortion are three times more likely to leave the workforce than women who were able to access abortion when needed.¹⁵ With such a large base in restrictive states, many, if not a majority, of the Company's employees may face these challenges and thus the Company may incur the costs.¹⁶

Additionally, the Proposal notes that the Company's brand and reputation could face consequences. If the Company continues its support of politicians that have led the charge on anti-abortion action in these hostile states, it may lose business from its customers in support of reproductive rights and women's health. In 2018, the Company was among the top 20 publicly traded corporate donors to the Republican State Leadership Committee (RSLC).¹⁷ That year, more than \$1 million from the RSLC went to political efforts supporting Republicans and/or opposing Democrats in Georgia, where 36 House Republicans won in contested districts.¹⁸ All of the 36 House Republicans voted for an extreme anti-abortion bill banning abortions as early as six weeks into pregnancy.¹⁹ More than \$47,000 was channeled to the RSLC's state political action committee, which gave money for ads supporting Republicans in 37 House Districts in Missouri. Thirty-one of these candidates won, and 30 of them voted

¹⁴ <https://reproductiverights.org/what-if-roe-fell>.

¹⁵ "Turnaway Study" (fact sheet) at https://www.ansirh.org/sites/default/files/publications/files/turnaway_study_brief_web.pdf.

¹⁶ As an example of one impact on the employees, if *Roe v. Wade* is overturned and the anticipated bans occur, women seeking abortions would be forced to cross state lines and travel significant distances to obtain abortions. For example, if a total ban of reproductive rights were in place, Texas residents seeking abortions would have to travel an average of 542 miles (one-way) to access medical attention while Florida residents would have to travel an average of 575 miles (one-way). "If *Roe v. Wade* Falls: Travel Distance for People Seeking Abortion," Guttmacher Institute (accessed February 9, 2022), <https://states.guttmacher.org/>.

¹⁷ *Conflicted Consequences*, Center for Political Accountability, p. 20 at <https://politicalaccountability.net/hifi/files/Conflicted-Consequences.pdf>.

¹⁸ *Id.*

¹⁹ *Id.*

for the extreme anti-abortion measure in Missouri, criminalizing abortion after eight weeks of pregnancy.²⁰

The direct connection between donations from the Company to politicians supporting anti-abortion laws further evidences how this issue is significantly related to the Company. The Company's financial support for anti-abortion policymakers may impact its customer base and reputation.

The issue of reproductive rights has the potential to have significant impacts on the company and its 1.6 million employees across the US. The Company is a major nationwide employer with numerous establishments in areas impacted by the uncertainty of reproductive rights; if laws prohibiting abortion were implemented in twenty-six states, there would be a significant impact on the Company and its employees. Generally, the cost of an abortion ranges anywhere from \$0-\$1,500, depending on several factors, including health insurance, location, and type of abortion.²¹ When workers are forced to travel hundreds of miles to obtain legal treatment, the cost can exceed that range by hundreds or even thousands of dollars. As the average Walmart worker makes \$16.40/hour,²² this would be a burdensome cost, requiring both significant funds and taking time off work, forgoing further income.

At a national level, an estimated 505,000 more women, aged 15–44, would enter the workforce if all state-level abortion restrictions were eliminated. Such restrictions cost state economies \$105 billion per year by reducing labor force participation and increasing turnovers and time off rates.²³

Further, data indicates that two-thirds of “top talent” workers claim that the Texas ban (and others like it) would discourage them from working in the state, while 64% say that they would not apply for a job in a state that passed Texas-style ban on abortion.²⁴

Fortune reported a poll conducted by NPR, PBS, and Marist, which “found that 77% of Americans supported a woman's right to an abortion under at least some circumstances.”²⁵ The same article reports that “about 63% of people buy from companies that reflect their personal beliefs, and 62% want companies to take a stand on cultural and political issues that they care about.”²⁶ Polling conducted by

²⁰ *Id.*

²¹ “How Much Does an Abortion Cost?,” Planned Parenthood (June 29, 2020),

<https://www.plannedparenthood.org/learn/teens/ask-experts/how-much-does-an-abortion-cost>.

²² “Walmart will raise hourly pay for 565,000 workers,” New York Times (September 2, 2021) at

<https://www.nytimes.com/2021/09/02/business/walmart-hourly-pay-raise.html>.

²³ “The Costs of Reproductive Health Restrictions,” Institute for Women’s Policy Research (February 8, 2022),

<https://iwpr.org/costs-of-reproductive-health-restrictions/>.

²⁴ “What Does ‘Top Talent’ Think About Working in States that Ban Abortion?,” Perry Udem (August 31, 2021),

https://perryudem.com/wp-content/uploads/2021/09/PerryUdem-TX-Abortion-Law_Survey-Findings_0901.pdf.

²⁵ Jess McHugh, “More Companies Are Openly Supporting Abortion Rights. That May Be Controversial, But It’s Also Good Business,” *Fortune*, November 8, 2019, <https://fortune.com/2019/11/08/companies-that-openly-support-abortion-access>.

²⁶ Jess McHugh, “More Companies Are Openly Supporting Abortion Rights. That May Be Controversial, But It’s Also Good Business,” *Fortune*, November 8, 2019, <https://fortune.com/2019/11/08/companies-that-openly-support-abortion-access/>.

Greenwald Research in September 2021 found that more than half of Gen Z (56%) and Millennials (55%), would be more likely to buy from a brand that publicly supported reproductive health care.²⁷

In sum, in a “post-*Roe*” environment, in some regions including its headquarter state, Walmart may face higher turnover (with associated costs), and more difficulty in recruiting talent. Abortion is a common medical procedure, experienced by one in four women in the U.S. by the end of her reproductive years.²⁸ As the country’s largest employer, with more than 1.6 million workers in all 50 states, it will face these challenges more keenly than other companies.

Responding to Company Arguments

In this instance, the Company Letter, despite obvious and overwhelming evidence to the contrary, asserts that the Proposal does not address a significant policy issue, but only matters of ordinary business, specifically, management of the Company’s workforce.

The Company argues that the Proposal is excludable because it relates to the Company’s management of its workforce and cites precedents including the 2021 exclusion of a similar proposal *Walmart, Inc.* (April 7, 2021). The 2021 proposal filed at Walmart, Inc. asked the Company to issue a report any known and any potential risks and costs to the Company caused by enacted or proposed state policies affecting reproductive rights, and detailing any strategies beyond litigation and legal compliance that the Company may deploy to minimize or mitigate these risks. However, the supporting statement’s recommendations did not yield to board or management discretion in recommending that “the report evaluate any risks and costs including, but not limited to: effects on employee hiring, retention, and productivity, and increases in litigation and brand risks. Strategies evaluated should include any public policy advocacy programs, political contributions policies, and human resources or educational strategies.” In an unwritten “chart” decision, the Staff allowed the exclusion of the proposal as relating to ordinary business. The Company had argued that the proposal went too far to delve into the management of the workforce.

However, a proposal model or topic which may have been previously found excludable under Rule 14a-8(i)(7) may reach a different outcome in subsequent years for several reasons. First, an issue may “ripen” for shareholder consideration. There are innumerable examples in SEC rulings in which an issue is excludable as ordinary business one year, but in which the prevalence of the issue – the escalating level of public debate – merited a different outcome in a subsequent year. As we have discussed above, the new status of these issues with an impending Supreme Court determination on *Roe v. Wade* and an escalation

²⁷ What Do Consumers Think About Brands That Take a Stand on Reproductive Health Care? Results From a Nationwide Survey of U.S. Consumers, Greenwald Research (September 3, 2021), at <https://greenwalddresearch.com/wp-content/uploads/2021/09/Tara-Health-Foundation-2021-Consumer-Survey-on-Brands-Defending-Reproductive-Health.pdf>.

²⁸ “Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008–2014,” *American Journal of Public Health*, December 2017 at <https://doi.org/10.2105/AJPH.2017.304042>.

of state-level legislation constricting women's right to abortions have made these issues a clear social conflict that merits the current proposal. We note in addition that with the adoption of Staff Legal Bulletin 14 L additional emphasis, in determining whether a proposal transcends ordinary business, is now placed on whether "the proposal raises issues with broad societal impact, such that they transcend the ordinary business of the company" (emphasis added). The Staff's adoption of SBL 14L makes it clear that a significant policy is determined by its social impact. Concerning the issue of reproductive rights, describing its social impact as "broad" is an understatement.

Secondly, a prior determination may also be altered when text of a proposal may be adjusted to accommodate Staff concerns before it is resubmitted. In this instance, in light of last year's ruling the Proponent altered the proposal, to clarify that the focus is on policies "severely restricting reproductive rights" and that any reporting on employee related issues is in the discretion of the board:

RESOLVED: Shareholders request that Walmart Board of Directors issue a public report prior to December 31, 2022, omitting confidential and privileged information and at a reasonable expense, detailing any known and any potential risks and costs to the Company caused by enacted or proposed state policies **severely restricting reproductive rights**, and detailing any strategies beyond litigation and legal compliance that the Company may deploy to minimize or mitigate these risks.

SUPPORTING STATEMENT: Shareholders recommend that the report evaluate any risks and costs to the company associated with new laws and legislation severely restricting reproductive rights, and similar restrictive laws proposed or enacted in other states. **In its discretion, the board's analysis may include** any effects on employee hiring, retention, and productivity, and decisions regarding closure or expansion of operations in states proposing or enacting restrictive laws and strategies such as any public policy advocacy by the company, related political contributions policies, and human resources or educational strategies. (*emphases added*)

Thus, the Proposal for 2022 grants the Board clear flexibility to choose whether or not to report on certain nitty-gritty issues that are ordinary business. Although the Proponent believes that it is appropriate to ask the Company to report on these issues because of the overriding, transcendent issue of reproductive rights, the Proponent has now made it clear that under the terms of the revised proposal any such reporting is entirely within the discretion of the board.

Impact of social issues on the company transcends ordinary business

The Company Letter, page 10, seeks to distinguish the precedent of *Procter & Gamble* (August 16, 2016) where it notes that a similar proposal requested:

a **report on the risks and costs to the company** of certain "enacted or proposed state policies *supporting discrimination* against LGBT people" and "detailing strategies . . . the [c]ompany may *deploy to defend* [its] LGBT employees and their families *against discrimination and harassment* that is encouraged or enabled by the policies" [emphases added]. The recitals

described the company's efforts to provide resources for and protect its LGBT employees from discrimination before noting that geographies in which it operated were enacting "pro-discrimination policies" that "legalize[d] discrimination against LGBT individuals." The proposal's focus was on the risks and costs to the company arising from its engagement with the issue of discrimination against LGBT persons. The Staff did not concur with the exclusion of the proposal under Rule 14a-8(i)(7) as relating to the company's ordinary business operations. The Proposal, by contrast, does not focus on the Company's role in addressing a significant social policy issue that transcends the Company's ordinary business operations for purposes of Rule 14a-8(i)(7). Instead, the requested report seeks "any" risks and costs to the Company that arise from "state policies." (*emphasis added*)

In addition, as discussed above, the Proposal seeks a report analyzing the risks and costs with respect to a variety of ordinary business matters, including related to "employee hiring, retention, and productivity" and "decisions regarding closure or expansion of operations in [certain] states." Therefore, unlike the proposal in *Procter & Gamble*, the Proposal does not focus on significant social policy issues for purposes of Rule 14a-8(i)(7) but addresses ordinary business matters arising from the Company's operations.

The Company Letter thus asserts that because the Proposal does not request disclosure of *strategies for compliance* with the laws and policies (which the company would have no doubt asserted to be a matter of ordinary business), *nor asks the Company to take any particular action to defend employees against the new laws*, but rather focuses only on risks and costs associated with those laws, the proposal should be excludable.

However, examination of both the Proposal and Staff precedents demonstrates that this is both factually and legally incorrect. Notably, the current Proposal *does* invite the Company to report on any strategic responses to the reproductive rights laws. The supporting statement specifically states that among other things, in the board's discretion, the report should include a discussion of "decisions regarding closure or expansion of operations in states proposing or enacting restrictive laws and strategies such as any public policy advocacy by the company, related political contributions policies, and human resources or educational strategies."

Thus, even if the proposal were evaluated against the model of the Procter & Gamble precedent, the proposal is squarely within the principle underlying that ruling, under which a report on a significant social policy issue may be requested to address *both* the impact on the company and the Company's responses to that issue.²⁹

²⁹ The Company cites the language from the Proposal to attempt to distinguish it from the language of the proposal in *Procter & Gamble*: noting the current Proposal is asking the Company to report on "any known and any potential risks and costs to the Company caused by enacted or proposed state policies affecting reproductive rights, and detailing any strategies . . . to minimize or mitigate these risks" and that this encompasses the Company's ordinary business operations. However, the language from the current Proposal and the Procter & Gamble proposal is nearly identical, with the language in that proposal requesting a report on "known and potential risks and costs to the Company caused by any enacted or proposed state policies supporting discrimination against LGBT people, and detailing strategies . . . that the Company may deploy to defend the Company's LGBT employees and their families

However, even if the Proposal only asked for information on the risks to the Company associated with the significant policy issue, Staff precedents demonstrate that the Company Letter incorrectly interprets Staff determinations to find that such proposals are excludable. While a proposal that asks for the company to report on its proactive responses to a significant social policy issue are not excludable, **so are proposals focused on the impact of a significant social policy issue on a company.**

Numerous Staff precedents support this conclusion. In *Walmart Stores, Inc.* (March 28, 2011) the proposal requests that the board prepare a report disclosing the *business risks related to climate change*. The proposal was found not excludable under Rule 14a-8(i)(7). In *Goldman Sachs* (February 7, 2011) related to a proposal requesting the board prepare a report disclosing the business risk of developments in the political, legislative, regulatory and scientific landscape regarding climate change. The company had argued that the proposal was excludable under Rule 14a-8(i)(7):

We note in particular that both the resolution and the supporting statement included in the Proposal focus on the impact on the Company's business of legislation and regulation relating to climate change, and on cap-and-trade legislation specifically. The Staff has consistently allowed companies to exclude proposals under Rule 14a-8(i)(7) where the proposals addressed, the impact of particular legal or regulatory developments. *See, e.g., Yahoo!* (Apr. 5, 2007) (proposal relating to the effect of government regulation of the internet excludable under Rule 14a-8(i)(7)); *General Electric Co.* (Jan. 30, 2007) (proposal that the Staff describes as relating to "evaluating the impact of government regulation on the company" excludable under Rule 14a-8(i)(7)).

Because those Proposals in *Walmart* and *Goldman Sachs* addressed the significant policy issue of climate change, the reports regarding impact on the company were not considered excludable. These were not isolated rulings. Other Staff decisions are in accord. *General Electric Company* (February 8, 2011) the Staff reached the same conclusion on a similar proposal to *Goldman Sachs*. *Apple Inc.* (October 29, 2014) the proposal requested preparation of a report disclosing the risk to the company posed by possible changes in federal, state or local government policies in the United States relating to climate change and/or renewable energy. The Staff rejected the ordinary business argument.

The same logic has also applied to other significant policy issues. For instance, *Cleco Corporation* (January 26, 2012) the Proposal asked the company to prepare a report discussing the company's sustainability risks and opportunities, including an analysis of material water-related risks. The Staff concluded that the exclusion of the proposal was not appropriate, as it focused on the significant policy issue of sustainability.

against discrimination and harassment that is encouraged or enabled by the policies." Further, the supporting statements from the two policies are nearly identical, with the *Procter & Gamble* proposal asking "that the report evaluate risks and costs including, but not limited to, negative effects on employee hiring and retention... litigation risks to the Company... Strategies evaluated should include public policy advocacy, human resources and educational strategies..." The current Proposal in its supporting statement recommends that the report "evaluate any risks and costs to the company associated with new laws and legislation severely restricting reproductive rights, and similar restrictive laws proposed or enacted in other states. In its discretion, the board's analysis may include any effects on employee hiring, retention, and productivity, and decisions regarding closure or expansion of operations in states proposing or enacting restrictive laws and strategies such as any public policy advocacy by the company, related political contributions policies, and human resources or educational strategies."

Another ruling, showing that the concept is broadly applicable to significant policy issues beyond climate change and sustainability is *Vertex Pharmaceuticals Incorporated* (February 25, 2015) where the proposal asked the company to issue a report on the risks to Vertex from rising pressure to contain U.S. specialty drug price. The drug pricing issue was considered a significant policy issue, and thus a report on the impacts on the company were a fair request from a proposal.

Addressing government regulation related to a significant policy issue does not render a proposal excludable under Rule 14a-8(i)(7)

The Company also argues that the Proposal is excludable because it relates to the Company's assessment of the impact of a government regulation. The precedents cited by the Company Letter, ordinary business exclusions of proposals seeking assessment of impact of government regulation on a company generally either focused on an issue that was not found to address a significant policy issue, or otherwise emphasized day-to-day business considerations over the focus of the proposal. None of these issues apply to the present proposal. For example, the Company cites *General Electric Co.* (January 30, 2007), where the proposal requested a report on legislative initiatives affecting the company, including the company's plans to "reduc[e] the impact on the [c]ompany of: unmeritorious litigation (lawsuit/tort reform); unnecessarily burdensome laws and regulations (e.g., Sarbanes-Oxley reform); and taxes on the [c]ompany (i.e., tax reform)." The set of issues raised by the proposal collectively were not a recognized significant policy issue in the way that the issue of reproductive rights clearly is. The company additionally cites cases regarding the impact of a flat tax *General Electric Co.* (January 17, 2006), government regulation of the Internet, *Yahoo! Inc.* (April 5, 2007), and pension-related issues being considered in federal regulatory and legislative proceedings, *Niagara Mohawk Holdings, Inc.* (March 5, 2001).

The examples cited by the Company in the cited cases did not, in the Staff's assessment, address a significant policy issue. In contrast, the issue of reproductive rights is clearly a contentious and widely debated issue that qualifies as a significant policy issue with broad societal impact. A proposal is not excludable simply because it relates to the Company's assessment of the impact of government regulation of such an issue.

Other cases cited by the Company on employee management either do not relate to a significant policy issue or focus on "nitty gritty" manners of ordinary business. The Company's citation of *Intel Corp.* (March 18, 1999), where the Staff concurred with the exclusion of a proposal seeking adoption of an "Employee Bill of Rights," which would have established various "protections" for the company's employees, including limited work-hour requirements, relaxed starting times, and a requirement that employees treat one another with dignity and respect, does not focus on a significant policy issue as the current Proposal does. They also cite cases focusing on workplace accident prevention, *Amazon, Inc.* (April 1, 2020), compensation principles *Apple, Inc.* (November 16, 2015), training for foreign workers and citizenship documentation *Starwood Hotels & Resorts Worldwide, Inc.* (February 14, 2012), and improved visibility of educational status in a reduction-in-force review process, *Northrop Grumman Corp.* (March 18, 2010).

CONCLUSION

The proposal addresses a significant policy issue and does not micromanage the Company, and therefore it is not excludable pursuant to Rule 14a-8(i)(7). As such, we respectfully request that the Staff inform the company that it is denying the no action letter request. If you have any questions, please contact me at (413) 549-7333 or sanfordlewis@strategiccounsel.net.

Sincerely,

A handwritten signature in black ink, appearing to read "Sanford Lewis". The signature is written in a cursive style with a large initial "S".

Sanford Lewis

cc: Kristopher Isham

Resolution for Walmart 2022 Shareholder Meeting
Filed by Clean Yield Asset Management

Access to abortion is being challenged at the state and federal level in the U.S. A patchwork of laws regulates access to abortion and broader reproductive rights. Since 2011, state legislatures have passed more than 600 restrictive laws.¹ Other states have enacted legislation that protects these rights. Eleven states ban abortion coverage in all state-regulated private insurance plans, while six states require private insurance plans to cover abortion.²

Walmart Inc. (“Walmart”) has operations in all fifty states, subject to this patchwork of laws. Should *Roe v. Wade* be weakened or overturned, as is widely anticipated, Walmart employees will face challenges accessing abortion care. As of October 2021, 60% of Walmart’s 5,342 stores in the U.S. were in states that could immediately prohibit abortion entirely under this scenario.

Employers as well as employees bear the cost of restricted access to health reproductive health care. For example, women who cannot access abortion are three times more likely to leave the workforce than women who were able to access abortion when needed.³ The Institute for Women’s Policy Research estimates that state-level abortion restrictions annually keep more than 500,000 women aged 15 to 44 out of the workforce.⁴ (<https://bit.ly/3Dt5bQg>)

If *Roe vs. Wade* weakened or overturned, Arkansas is likely to outlaw abortion entirely.⁵ Should that occur, Walmart may find it more difficult to recruit employees to Arkansas, or to the 20+ states now considered likely to outlaw abortion if *Roe* is overturned.⁶ (<https://bit.ly/3Ctj3Zl>) This may harm its ability to meet diversity and inclusion goals, with negative consequences to performance, brand and reputation.

In a nationwide survey of U.S. consumers in 2021, 64% said employers should ensure that employees have access to the reproductive health care they need, and 42% would be more likely to buy from a brand that publicly supported reproductive health care.⁷ (<https://bit.ly/3nmzd2U>) Surveys consistently show that a majority of Americans want to keep the *Roe v. Wade* framework intact.⁸ (<https://wapo.st/3cmRLK2>)

¹ “For the First Time Ever, U.S. States Enacted More Than 100 Abortion Restrictions in a Single Year,” Guttmacher at <https://www.guttmacher.org/article/2021/10/first-time-ever-us-states-enacted-more-100-abortion-restrictions-single-year>.

² Regulating Insurance Coverage of Abortion, Guttmacher at <https://www.guttmacher.org/state-policy/explore/regulating-insurance-coverage-abortion>.

³ “Turnaway Study” (fact sheet) at https://www.ansirh.org/sites/default/files/publications/files/turnaway_study_brief_web.pdf.

⁴ “The Costs of Reproductive Health Restrictions,” Institute for Women’s Policy Research at <https://bit.ly/3Dt5bQg>.

⁵ <https://bit.ly/3EKrphC>

⁶ [Perry Udem research](#) (2021): 64% (of working-age college-educated adults aged 18-64) say they would not apply for a job in a state that passed a ban like Texas’.

⁷ “What Do Consumers Think About Brands That Take a Stand on Reproductive Health Care? Results From a Nationwide Survey of U.S. Consumers,” at <https://greenwaldresearch.com/wp-content/uploads/2021/09/Tara-Health-Foundation-2021-Consumer-Survey-on-Brands-Defending-Reproductive-Health.pdf>.

⁸ “[Americans broadly support Supreme Court upholding *Roe v. Wade* and oppose Texas abortion law, Post-ABC poll finds](#),” Washington Post, 11.16.2021.

Resolution for Walmart 2022 Shareholder Meeting
Filed by Clean Yield Asset Management

RESOLVED: Shareholders request that Walmart Board of Directors issue a public report prior to December 31, 2022, omitting confidential and privileged information and at a reasonable expense, detailing any known and any potential risks and costs to the Company caused by enacted or proposed state policies severely restricting reproductive rights, and detailing any strategies beyond litigation and legal compliance that the Company may deploy to minimize or mitigate these risks.

SUPPORTING STATEMENT: Shareholders recommend that the report evaluate any risks and costs to the company associated with new laws and legislation severely restricting reproductive rights, and similar restrictive laws proposed or enacted in other states. In its discretion, the board's analysis may include any effects on employee hiring, retention, and productivity, and decisions regarding closure or expansion of operations in states proposing or enacting restrictive laws and strategies such as any public policy advocacy by the company, related political contributions policies, and human resources or educational strategies.